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corporation, not actually used in the discharge of its public functions could be levied upon and sold under ordinary execution, as upon a judgment against a private corporation." *Darling v. Baltimore,* 15 Md. 1, 14. And this case, too, regarded the furnishing of water and gas by a municipal water or gas company as "not essentially a public municipal function." *Vide* the recent case of *Brockenbrough v. Charlotte,* 46 S. E. 28 (N. C.). Other courts have gone a step further and denied that municipal corporations had any strictly private capacities. *Darlington v. Mayor, supra.* In *New Orleans v. Morris,* 105 U. S. 602, 603, the court said, "the city was not situated as regards this property as a private person would be in the purchase and acquisition of ordinary property." So also in Connecticut such water works must "unquestionably now be regarded as an undertaking for the public good, in the judicial sense of the term, not indeed as the discharge of one of the few governmental duties imposed upon it [the city of Hartford], but as ranking next in order." *West Hartford v. Commissioners,* 44 Conn. 360.

It is submitted, the better opinion seems to be that such property is public and not private. It is paid for by taxation and there can be taxation for no other but a public purpose. *Cooley, Const. Lim.,* 5th ed. pp. 209, 621. Moreover, municipal property is particularly subject to legislative control when purchased with funds raised by taxation. *Darlington v. Mayor, supra; Com. v. Lucas,* 93 U. S. 114; *Cooley, Const. Lim.,* 5th ed., pp. 292-295. The inhabitants of the city do not have rights in such property in any way analagous to that possessed in their individual property. The proposition is well expressed in *Coyle v. McIntire,* 7 Houst. (Del.) 44, at page 94: "The uses for which the corporation may acquire and hold property must necessarily, we think, be public uses. No citizen of Wilmington possesses any interest in the property [a municipal water works], which is said to be private, which he can sell or in any manner dispose of. No portion of the property held by the city passes to the local representatives of any inhabitant of the city or descends to his heirs after his death; partition cannot be made of the realty among the inhabitants in any manner known to law. Such property has not the incidents of private property attaching to property recognized as private among individual owners of property. When a citizen removes from the city he ceases to have any interest in the use of the property as a corporator."

THE VALIDITY OF CONSTITUTIONAL AMENDMENTS.

By a constitutional amendment the city and county governments of Denver and Arapahoe county have been consolidated. Article XIX of the Colorado constitution provides, among other things, that "the general assembly shall have no power to propose amendments to more than six articles of the constitution at the same session." It is admitted that the amendment, styled article XX, proposed, and ratified properly by the people, affects more than

six articles of the constitution. The supreme court of the State in *People v. Sours,* 74 Pac. 167, has supported the amendment.

Provisions for amendment are to be carefully observed, that the strength and dignity of the instrument itself may not be impaired. The constitution is the organic law of the State, and, speaking in the abstract, it is upon the unchangeableness of this law that the people rely. The "amendment habit" is a recognized weakness, but this, as an argument, is not to be urged farther than to temper the right of the people to alter their constitution as their needs demand. The judiciary may, to a considerable extent, guard against the evil. This question of discretion came up some years ago in Switzerland, where government institutions are similar to our own. The Salvationists undertook an "invasion" of the land. In some of the cantons their "campaigns" excited disturbances, and local laws were passed for the suppression of the meetings. The Salvationists declared the laws unconstitutional. The question was brought to the executive, as the highest tribunal, on a plea to the jurisdiction of the federal courts. He issued a report or judgment, based partly on law and partly on general considerations of public policy, granting the plaintiffs the right to hold meetings, but adding that the right must be exercised with moderation.[1] Bound as our decisions are by rules and precedent, peculiar circumstances may call for the discretion of the court.

The language of article XIX of the Colorado constitution was undoubtedly taken from the constitution of Illinois. It is a natural circumstance that the decisions most nearly in point should appear in the reports of the latter State. Taking up the matter that amendments by necessary implication do not offend the provisions of the constitution, the court, in *Wabash Ry. v. Drainage and Levee District,* 194 Ill. 310, said: "Section 31 of article IV of the constitution of 1870 as amended, under which the statute authorizing the appellee district to become incorporated was enacted, is paramount to the constitutional limitations in the constitution as originally framed with which it is in conflict." To the same effect are *Moore's Executors v. Lewis,* 106 Ill. 376; *Huston v. Clark,* 112 id. 344; *Wilson v. Board of Trustees,* 133 id. 446. The rulings in *Quick v. Township,* 7 Ind. 570, and *Railroad Co. v. Rambolt,* 67 Tex. 654, to the effect that where two provisions of a written constitution are irreconcilably repugnant, that which is last in order of time and in local position is to be preferred, are relevant to show the consideration due an amendment. In the latter case it was said, touching more directly the matter in hand, that if the last provision was more comprehensive and specific, it should be given effect on that ground. See also *People v. Angle,* 109 N. Y. 564. A constitution is the intention of the people, *Federalist,* No. 78, and a later intention is to be given the greater consideration. One of Madison's letters recites: "I think myself, that it will be expedient,

[1] *The Nation,* Dec. 15, 1901.

in the first place, to lay the foundation of the new system in such a ratification of the people themselves of the several States, as will render it clearly paramount to their authority." The sovereign right of the people to abolish or amend their constitution is exercised less often in this than in foreign countries of similar government. When this right is exercised a fair and liberal construction should be given the act and an amendment sustained unless in clear violation of the provisions of the constitution. The court has so held, and in accord with principles which a century of popular government has shown to be correct.